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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

APR 4 1997

Federal Communications Commission
Office of Secretary

In the Matter of

Implementation of the
Telecommunications Act of 1996:
Telemessaging, Electronic Publishing,
and Alarm Monitoring Services

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CC Docket No. 96-152

COMMENTS OF U S WEST, INC.
TO FURTHER NOTICE OF PROPOSED RULEMAKING

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U S WEST, Inc.

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SUMMARY

U S WEST, Inc. ("U S WEST"), submits these Comments in response to the Commission's Further Notice of Proposed Rulemaking in this docket. The Commission seeks comments about the meaning of "control" in relation to the Commission's proposed definition of electronic publishing. Section 274 defines electronic publishing and control. Different or additional definitions are not required. For purposes of explaining what it means to be engaged in the provision of electronic publishing, the Commission should focus on the definition of electronic publishing in Section 274(h) and on those functions which characterize the act of publishing, which include: originating, authoring, compiling, collecting, or editing the information content.

Section 274(a) of the Act permits a BOC to engage in electronic publishing through a separated affiliate. Section 274(c)(2)(C) of the Act also permits a BOC to participate in an electronic publishing joint venture as a BOC; it does not require a BOC to form a separated affiliate to participate. These provisions of the Act are self-explanatory.

For transactions between a BOC and its electronic publishing separated affiliate or joint venture, U S WEST supports the use of the disclosure mechanisms which the Commission adopted in the Accounting Safeguards Order in CC Docket No. 96-150. However, the Commission should require the disclosure of only those transactions which directly concern the provision of electronic publishing by the affiliate or joint venture.

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**COMMENTS OF U S WEST, INC.
TO FURTHER NOTICE OF PROPOSED RULEMAKING**

U S WEST, Inc. ("U S WEST"), submits these Comments in response to the Federal Communications Commission's ("Commission") Further Notice of Proposed Rulemaking in this proceeding.¹

- I. THE COMMISSION SHOULD ANALYZE WHAT IT MEANS TO ENGAGE IN ELECTRONIC PUBLISHING IN TERMS OF THE ATTRIBUTES OF PUBLISHING, NOT IN TERMS OF "CONTROL" OR IN TERMS OF PROVIDING TELECOMMUNICATIONS TRANSPORT, DELIVERY, DESIGN, OR GRAPHICS SERVICES

Section 274(h)(1) in the Telecommunications Act of 1996 ("Act") defines electronic publishing by describing the subject matter of various types of

¹ In the Matter of Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152, First Report and Order and Further Notice of Proposed Rulemaking, FCC 97-35, rel. Feb. 7, 1997 ("First Report and Order" or "Further Notice").

information content.² In the initial Notice in this docket, the Commission sought to distinguish services which are included in the definition of electronic publishing in Section 274(h)(1) from those which are expressly excluded from the definition by Section 274(h)(2).³

In the First Report and Order in this docket, the Commission recognized the following distinctions: transmission of information, provision of access to information,⁴ and provision of gateways or navigational systems to information⁵ by a Bell Operating Company ("BOC") are not electronic publishing under Section 274(h)(1), absent something more. The Commission concluded:

[A] BOC must control, or have a financial interest in, the content of information transmitted over its basic telephone service in order to be subject to the requirements of section 274. We therefore agree with those parties that argue that a BOC is not subject to section 274 requirements merely because it provides the transmission component of an electronic publishing service offered by an unaffiliated entity to end users.⁶

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 103 (1996) (47 U.S.C. § 274(h)(1)).

³ In the Matter of Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152, Notice of Proposed Rulemaking, FCC 96-310, rel. July 18, 1996 ("Notice"), at ¶ 31.

⁴ First Report and Order ¶ 46.

⁵ Id.

⁶ Id. ¶ 49.

A. For Purposes Of Section 274, Congress Has Defined
“Control”

In the Further Notice, the Commission seeks comment on how it should determine whether a BOC has control of the information content which is disseminated under Section 274. The Commission refers to the definition in Section 274(i)(4) where Congress defined “control” to have the same meaning that it has in the regulations promulgated by the Securities and Exchange Commission (“SEC”).⁷

In the Notice, the Commission said that the SEC’s regulations define “control” as “the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.”⁸ However, in the Further Notice, the Commission tentatively concludes “that this definition, which defines the term ‘control’ in a corporate context, is inappropriate for determining the meaning of ‘control’ in the present context, *i.e.*, when a BOC has ‘control’ of the content of information transmitted via its basic telephone service.”⁹

Section 274 of the Act uses the word “control” in the corporate context for a reason. When Congress said in Section 274(i)(4) that “control” has the same

⁷ Further Notice ¶ 243.

⁸ Notice ¶ 33.

⁹ Further Notice ¶ 243.

meaning that it has in the regulations promulgated by the SEC,¹⁰ Congress intended “control” to be defined in the corporate context, because Congress used the word “control” in Section 274 for a specific purpose.

Section 274(d) of the Act describes a nondiscrimination duty which is imposed upon a BOC “under common ownership or control with a separated affiliate or electronic publishing joint venture” to ensure that the BOC would not favor its affiliate or joint venture and disadvantage an unaffiliated electronic publisher when the BOC provides “network access and interconnections for basic telephone service[.]”¹¹

Section 274(i)(9) also uses the word “control” in a corporate context to define a “separated affiliate”:

The term “separated affiliate” means a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company’s or any of its affiliates’ basic telephone service.¹²

The word “control” has a significant and particular meaning under Section 274. Congress intended “control” to be defined in a corporate context to describe the characteristics of a corporate relationship between the BOC and its electronic publishing affiliate. Adopting another definition of “control” for a

¹⁰ 47 U.S.C. § 274(i)(4).

¹¹ Id. § 274(d) (emphasis added).

¹² Id. § 274(i)(9) (emphasis added).

different purpose would add unnecessary complexity as well as ambiguity to the interpretation of, and compliance with, the requirements of Section 274.

Rather than attempting to explain the meaning of electronic publishing in terms of “control,” the exercise of which may or may not have anything to do with the provision of an electronic publishing service, the Commission should focus upon the attributes of what it means to be a publisher, as explained below.

**B. Publishing Means To Originate, Author, Compile, Collect,
 Or Edit Information Content**

When the Commission concluded in the First Report and Order that a BOC is engaged in the provision of electronic publishing if it “controls” or has a financial interest in the information content being disseminated, the Commission superimposed the attribute of “control” on the definition of electronic publishing without recognizing the important distinctions which it made in the First Report and Order between the provision of transmission services and the provision of an information service. The Commission’s proposed use of the word “control” was not an element of the definition of electronic publishing adopted by Congress. Not surprisingly, the Commission has found that the way in which Congress intended to use and define “control” in Section 274 in a corporate context does not assist the Commission to impose “control” as an attribute of electronic publishing.

C. **The Commission Should Focus On What It Means To Be
A “Publisher” To Determine Whether An Entity Is
Engaged In Providing Electronic Publishing Under
Section 274**

“Control” is not germane to the definition of electronic publishing. Even though a publisher may use telecommunications services provided and controlled by a carrier to disseminate the information content, the carrier does not become a publisher under the Act.

In the First Report and Order,¹³ the Commission found an explanation, commonly accepted in the publishing industry and upon which federal copyright law is based, of what it means to be a publisher.¹⁴ The AT&T Consent Decree prohibited AT&T from engaging in the provision of electronic publishing. “Electronic publishing” was defined in the Decree as the provision of any information which AT&T or its affiliates “has, or has caused to be, originated, authored, compiled, collected, or edited” or in which it has a direct or indirect financial or proprietary interest.¹⁵

The ability to “control” those functions may be implicit in that definition. But the focus in that definition, as the Commission’s focus in this docket should be, is upon those activities which evidence the act of publishing. U S WEST submits that a BOC electronic publishing affiliate or joint venture is engaged in electronic

¹³ First Report and Order ¶ 49.

¹⁴ United States v. Western Electric Co., 552 F. Supp. 131 (D.D.C.), aff’d sub nom. Maryland v. U.S., 460 U.S. 1001 (1983) (“AT&T Consent Decree”).

¹⁵ Id. at Section VIII(D).

publishing if the electronic publishing affiliate or joint venture “has, or has caused to be originated, authored, compiled, collected, or edited” the information content described by Congress in Section 274(h)(1).¹⁶

This is consistent with the Commission’s other conclusions in the First Report and Order that a BOC or BOC affiliate which provides only transmission for an unaffiliated entity’s electronic publishing service is not itself engaged in electronic publishing. Because it provides the transmission facilities, the BOC may possess the ability to “control” how the information content is physically disseminated and delivered to end users. However, the BOC is not engaged in electronic publishing in this example, because the BOC does not engage in any of the functions of a publisher; i.e., the BOC does not originate, author, compile, collect, or edit any of the information content.

This analysis of the attributes of publishing also responds to a related issue. In the Further Notice, in pursuit of a definition of control, the Commission asks “whether ‘control’ should be broadly interpreted to include the ability of a BOC, when acting as a gateway provider, to limit the types of information to which its gateway connects.”¹⁷ A BOC’s exercise of such power may illustrate an attribute of control, but it has nothing to do with publishing. U S WEST agrees with NYNEX

¹⁶ Id.

¹⁷ Further Notice ¶ 244.

“that this ability does not imply the type of ‘control’ over the underlying information being transmitted and, therefore, does not constitute electronic publishing.”¹⁸

U S WEST urges the Commission to change its focus if its purpose is to explain what activities may cause a BOC to be regarded as engaging in electronic publishing under the Act. The Commission should consider the attributes of what it means to be engaged in publishing, described above. If a BOC, a BOC affiliate, or a joint venture has, or has caused to be, originated, authored, compiled, collected, or edited any of the information content, as defined by Congress in Section 274(h)(1), and which is disseminated using the BOC’s or another provider’s telecommunications services, it is engaged in electronic publishing.¹⁹

II. A JOINT VENTURE IN WHICH A BOC HAS AN EQUITY OR REVENUE INTEREST OF MORE THAN 10 PERCENT BUT NOT MORE THAN 50 PERCENT IS AN ELECTRONIC PUBLISHING JOINT VENTURE FOR PURPOSES OF SECTION 274

The Commission seeks clarification about what it means to have a “financial interest” in the content of the information. In the Further Notice, the Commission tentatively concludes “that a BOC has a ‘financial interest’ in the content of the information when the BOC owns the information or has a direct or indirect equity

¹⁸ Id. (footnote omitted).

¹⁹ Whether the electronic publishing entity is required to comply with the separated affiliate requirements in Section 274(b) depends upon whether it uses the BOC’s basic telephone service to disseminate the information content (First Report and Order ¶ 54) and, even if it does, whether the business arrangement between the BOC and the electronic publisher qualifies as a joint venture under Section 274(c)(2)(C) (47 U.S.C. § 274(c)(2)(C)) for which no separated affiliate is required, as explained in Section II below.

interest in the information[.]”²⁰ U S WEST agrees in principle with this conclusion, subject to the caveat that the focus should be on whether the entity or enterprise in which the BOC has a financial interest has originated, authored, compiled, collected, or edited the information content. The entity should be found to be engaged in electronic publishing, as defined by the Act, before a BOC’s equity or revenue interest in the entity can be found to represent a financial interest in electronic publishing.

U S WEST agrees with NYNEX “that a ‘financial interest’ in the content of the information should not be interpreted to include receipt of compensation by a BOC for managing and presenting the content of unaffiliated entities as part of its gateway services”²¹ or as part of designing or hosting a customer’s or publisher’s Internet web site.

A. An Equity Or Revenue Interest Of 50 Percent Or Less
And More Than 10 Percent In The Content Of
Information Is An Interest In Electronic Publishing And
Is Subject To The Requirements Of Section 274

The Commission asks whether it should establish a *de minimis* exception for a financial interest. In the Notice, the Commission said the following with regard to an interest in a joint venture: “We tentatively conclude that a BOC is deemed to ‘own’ an electronic publishing joint venture if it holds greater than a 10 percent but not more than a 50 percent direct or indirect equity interest in the venture, or has

²⁰ Further Notice ¶ 245.

²¹ Id.

the right to greater than 10 percent but not more than 50 percent of the venture's gross revenues."²² U S WEST agrees with this conclusion.

Section 274(c)(2)(C) defines an electronic publishing joint venture as a venture in which the BOC or BOC affiliate "has not more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture."²³ Section 274(i)(8) defines "own" as: "to have a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement."²⁴

The Act establishes a *de minimis* exception. If the BOC or BOC affiliate owns an equity or revenue interest of 10 percent or less in an electronic publisher, the BOC or BOC affiliate is not engaged in electronic publishing under the Act.

If the BOC or BOC affiliate owns an equity or revenue interest of 50 percent or less or an equity or revenue interest of more than 10 percent in an electronic publishing joint venture, the joint venture would be regarded as an electronic publishing joint venture under the Act. The joint venture and the BOC would be required to comply with some, but not all, of the separation requirements in Section 274(b).²⁵ The Act would not require the BOC to create a separated affiliate

²² Notice ¶ 59.

²³ 47 U.S.C. § 274(c)(2)(C).

²⁴ Id. § 274(i)(8).

²⁵ Id. § 274(b).

for the purpose of owning its minority equity or revenue interest in the joint venture. Section 274(c)(2)(C) of the Act permits a BOC to participate as a BOC with an unaffiliated entity in an electronic publishing joint venture.

The Commission's conclusions in the First Report and Order comport with this analysis. The Commission said that a BOC may directly hold an interest in an electronic publishing joint venture. The Act would not require the BOC to establish a separated affiliate to hold the joint venture interest. Moreover, the Commission also said that the BOC would not be required to establish a separated affiliate to hold any interest in an electronic publishing service, if the service is disseminated via the basic telephone service of a provider other than the BOC.²⁶

**B. An Equity Or Revenue Interest Of More Than 50 Percent
In The Content Of Information Is An Interest In
Electronic Publishing And Is Subject To The
Requirements Of Section 274**

If a BOC or a BOC affiliate owns an equity or revenue interest of more than 50 percent in an electronic publishing service which is disseminated by means of the BOC's basic telephone service, the BOC or BOC affiliate would have the ability to originate, author, compile, collect, or edit the information content, the BOC or BOC affiliate would be engaged in electronic publishing, and, if the information is disseminated using the BOC's basic telephone services, the electronic publishing

²⁶ First Report and Order ¶ 54.

service would be required to comply with the structural and transactional separation requirements in Section 274(b).²⁷

The Act would require that the equity or revenue interest of more than 50 percent be held and managed by a separated affiliate. The electronic publishing entity would be regarded as a “separated affiliate” as defined in Section 274(i)(9)²⁸ of the Act and would be required to comply with all of the structural and transactional separation requirements under Section 274(b).

On the other hand, if the electronic publishing service is disseminated via the basic telephone service of a competing wireline local exchange carrier or commercial mobile radio service provider, the BOC or BOC affiliate would still be engaged in electronic publishing. However, the Act would not require the equity or revenue interest of more than 50 percent to be held by a separated affiliate which complies with the structural separation requirements under Section 274(b).²⁹

III. SECTION 274(b)(3)(B) REQUIRES TRANSACTIONS BETWEEN A BOC AND ITS ELECTRONIC PUBLISHING AFFILIATE OR JOINT VENTURE TO BE MADE PUBLICLY AVAILABLE

A. Transactions Pursuant To Written Contracts Or Tariffs Are Subject To Section 274(b)(3)(B)

Section 274(b)(3)(B) requires a BOC and its electronic publishing separated

²⁷ 47 U.S.C. § 274(b).

²⁸ Id. § 274(i)(9).

²⁹ First Report and Order ¶ 54.

affiliate or joint venture to “carry out transactions . . . pursuant to written contracts or tariffs that are filed with the Commission and made publicly available[.]”³⁰ In the Further Notice, the Commission seeks comment about what constitutes a “transaction.”³¹

Section 272(b)(5) contains a comparable public disclosure requirement for “transactions.” It requires a separate affiliate engaged in the provision of in-region interLATA services, interLATA information services, or manufacturing to “conduct all transactions with the Bell operating company of which it is an affiliate on an arm’s length basis with any such transactions reduced to writing and available for public inspection.”³² In the Non-Accounting Safeguards Order, the Commission concluded that it would not adopt additional non-accounting safeguards, definitions, or requirements to implement Section 272(b)(5).³³ The Commission adopted the following rule in that docket:

Arm’s length transactions. A section 272 affiliate shall conduct all transactions with the BOC of which it is an affiliate on an arm’s length basis, pursuant to the accounting rules described in § 32.27 of this chapter, with any such transactions reduced to writing and available for public inspection.³⁴

³⁰ 47 U.S.C. § 274(b)(3)(B).

³¹ Further Notice ¶ 251.

³² 47 U.S.C. 272(b)(5).

³³ In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 5 Comm. Reg. (P&F) 696, 755-56 ¶ 193 (1996) (“Non-Accounting Safeguards Order”).

³⁴ 47 C.F.R. § 53.203(e).

The Commission also considered this Section 272(b)(5) requirement in the Accounting Safeguards Order.³⁵ The Commission did not further define “transaction” in that docket. Rather, it chose to rely upon the Commission’s existing Part 32 rules to identify affiliate transactions which are subject to the requirement. In that docket, the Commission amended the Part 32 rules as to transactions with affiliates. Those amended rules describe affiliate transactions as involving either: (1) assets sold or transferred between a carrier and its affiliate or (2) services provided between a carrier and its affiliate.³⁶

For purposes of Section 274(b)(3)(B), no additional rules are required to define “transactions” between a BOC and an electronic publishing separated affiliate or an electronic publishing joint venture.

B. Transactions May Be Evidenced By Tariffs or Written Contracts

The Commission also seeks comment about the requirement in Section 274(b)(3)(B) that transactions will be evidenced by written contracts or tariffs “filed with the Commission and made publicly available.”³⁷ In the Further Notice, the Commission observes that “BOCs are already required to file tariffs with

³⁵ In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, 11 FCC Rcd. 17539, 17588-617 ¶¶ 111-166 (1996) (“Accounting Safeguards Order”).

³⁶ 47 C.F.R. § 32.27(b),(c).

³⁷ 47 U.S.C. § 274(b)(3)(B).

the Commission,” that “section 211 of the Communications Act imposes a . . . requirement” on some common carriers to file copies of certain types of contracts with the Commission, and that “carriers are permitted to comply with section 211 by keeping the contracts on their premises such that they are ‘readily accessible to the Commission staff and members of the public upon reasonable request.’”³⁸

For written contracts which are not required to be filed with the Commission, the Commission concluded that a Section 272 separate affiliate and a BOC could comply with the requirement in Section 272(b)(5) to make “transactions” “available for public inspection” by doing the following: The BOC must (1) make information about transactions available for public inspection at the principal place of business of the BOC³⁹ and (2) provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company’s home page.⁴⁰

In this docket, for written contracts between a BOC and an electronic publishing separated affiliate or joint venture which the Commission decides need not be filed, the Commission asks whether the disclosure requirements it adopted for transactions under Section 272(b)(5) should also be the disclosure requirements for transactions under Section 275(b)(3)(B).⁴¹ U S WEST agrees that the procedures for disclosure should be the same. However, U S WEST does not agree that all

³⁸ Further Notice ¶ 248.

³⁹ Accounting Safeguards Order at 17593 ¶ 122 & n. 298.

⁴⁰ Id. at 17593 ¶ 122.

⁴¹ Further Notice ¶ 250.

contracts between the BOC and its separated affiliate or joint venture should be subject to disclosure.

1. The Commission Should Adopt The Same Disclosure Procedures As Those In The Accounting Safe-guards Order For Disclosure Of Transactions Under Section 274(b)(3)(B)

The Commission should adopt the following requirements in this docket: For written contracts which are not required to be filed with the Commission, the BOC must (1) make information about these transactions available for public inspection at the principal place of business of the BOC, and (2) provide a description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page.

2. Only Transactions Between A BOC And Its Electronic Publishing Affiliate Or Joint Venture Which Relate To Electronic Publishing Should Be Subject To Disclosure

U S WEST advocates that only those written contracts between a BOC and an electronic publishing separated affiliate or joint venture which concern the provision of an electronic publishing service by the affiliate or the venture should be disclosed pursuant to Section 274(b)(3)(B). Other written contracts between a BOC and its separated affiliate or joint venture should not be subject to the disclosure requirement in Section 274(b)(3)(B).

Section 274 concerns the provision of electronic publishing services. A separated affiliate or joint venture may also be engaged in the provision of other products and services not related to electronic publishing. Written contracts between the BOC and its affiliate or joint venture which relate to those other products and services should be not subject to the disclosure requirement.

For example, a BOC affiliate may offer a print yellow pages product as well as an Internet yellow pages product. A broad reading of the disclosure requirement in Section 274(b)(3)(B) could require the BOC to disclose all contracts with the affiliate, including those contracts that relate exclusively to the affiliate's non-electronic publishing print yellow pages product.

Under the disclosure requirement in Section 274(b)(3)(B), a competitive provider of an Internet service would be entitled to review the contracts between the BOC and its affiliate which relate to the affiliate's Internet service. However, under a broad reading of the disclosure requirement in Section 274(b)(3)(B), a competitive provider of only a print yellow pages product would also be entitled to review the contracts between the BOC and its affiliate which relate to the affiliate's print yellow pages product, even though these transactions have nothing to do with electronic publishing or the concerns which Congress intended to address in Section 274.

For business reasons, the BOC affiliate or joint venture may offer both electronic and non-electronic publishing products and services. They may conclude that it is more efficient for a single business to offer several different products and

services. They may conclude that there are production or marketing synergies between some of the products and services. Nevertheless, under a broad reading of the disclosure requirement, the affiliate or joint venture is exposed unfairly to a requirement to disclose all of its transactions with the BOC for the benefit of all of its competitors, whether or not they provide electronic publishing services in competition with the BOC and the BOC affiliate.

Congress intended the disclosure requirement to have a more limited purpose. It was intended to require the disclosure of transactions which relate to the provision of electronic publishing by a BOC affiliate or joint venture. For this reason, the disclosure requirement in Section 274(b)(3)(B) should be interpreted to require that transactions, pursuant to written contracts between a BOC and its electronic publishing affiliate or joint venture, be made publicly available only if they relate to the provision of electronic publishing by the affiliate or the joint venture.

C. Confidential And Proprietary Information Should Be Subject To Protection

Some of the transactions between a BOC and an electronic publishing affiliate or joint venture may contain confidential or proprietary information. The same concern exists under Section 272(b)(5), which requires that transactions between a BOC and its Section 272 interLATA or manufacturing affiliate be made available for public inspection. With regard to the relationship between that

disclosure requirement and safeguarding the parties' confidential and proprietary information, the Commission said: "While section 272(b)(5) requires BOCs to reduce their transactions to writing and make them 'available for public inspection,' we will continue to protect the confidential information of BOCs, as well as other incumbent local exchange carriers [note 301]." "Note 301: We are currently examining the protection of confidential information in GC Docket No. 96-55."⁴²

U S WEST urges the Commission to consider comparable safeguards in GC Docket No. 96-55⁴³ for the parties' confidential and proprietary information in Section 274(b)(3)(B) transactions.

IV. CONCLUSION

The Act defines electronic publishing. The Commission should provide an explanation of the functions which may be performed by an electronic publisher which would cause it to be regarded as engaged in electronic publishing. Those functions include originating, authoring, compiling, collecting, or editing any of the information content. If an entity does not perform one or more of these functions, it is not engaged in electronic publishing. Moreover, if an entity provides only transport or delivery services, or design or graphics or layout services, or a

⁴² Accounting Safeguards Order at 17593-94 ¶ 122 & n.301.

⁴³ In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, Notice of Inquiry and Notice of Proposed Rulemaking, 11 FCC Rcd. 12406 (1996).

navigational menu for a gateway, it is not engaged in electronic publishing. The Act defines electronic publishing. No additional definition is required.

The Act describes when a BOC would be required to provide electronic publishing services through a separated affiliate and when a BOC would be permitted to participate as a BOC in electronic publishing through a joint venture. A BOC is not engaged in electronic publishing if it owns an equity or revenue interest of 10 percent or less in an electronic publisher. A BOC owns a financial interest in an electronic publishing joint venture if it owns an equity or revenue interest of not more than 50 percent and not less than 10 percent. The BOC and the electronic publishing joint venture would be required to comply with some of the separation requirements under Section 274(b). However, the BOC would not be required to establish a separated affiliate to hold and manage its minority interest in the joint venture.

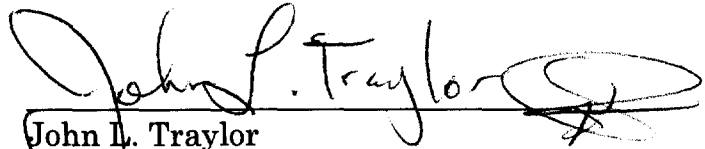
The Commission should adopt the same public disclosure procedures for transactions between a BOC and its electronic publishing affiliate or joint venture as it adopted for transactions between a BOC and its Section 272 separate affiliate. However, the disclosure requirement under Section 274(b)(3)(B) should be limited to

transactions which relate to the provision of an electronic publishing service by the
BOC's affiliate or joint venture.

Respectfully submitted,

U S WEST, INC.

By:

A handwritten signature in dark ink, appearing to read "John L. Traylor", is written over a horizontal line.

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